

Braille Monitor



APRIL, 1983

VOICE OF THE NATIONAL FEDERATION OF THE BLIND



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THE BRAILLE MONITOR

PUBLICATION OF THE
NATIONAL FEDERATION OF THE BLIND

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THE BRAILLE MONITOR

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THE NATIONAL FEDERATION OF THE BLIND

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**THE NATIONAL FEDERATION OF THE BLIND IS NOT AN ORGANIZATION
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NOTE TO SPECIAL ISSUE

(Note: We herewith print a special issue of the Monitor devoted entirely to matters involving the California lawsuit and its successful conclusion. Hopefully this episode in our history can now be left behind us. Bob Acosta apparently thought to destroy our movement by creating a new civil war. In this he failed. The agencies, too, had an axe to grind. They sought to exploit the situation, trying to weaken and divide us. Again, the effort was a failure.

Costly as the California episode

was in financial resources, it created hardly a ripple in our daily operations and activities. Moreover, it brought us closer together as a people and never once created disharmony or a weakening of purpose. We now go forward with our internal problems settled, stronger and more determined than we have ever been. The California story is now history, but it is a history from which we can learn and draw strength. We record it in the Monitor, for our own instruction and for the benefit of those to follow.)

VICTORY IN THE CALIFORNIA LAWSUIT

by Kenneth Jernigan

On January 31, 1983, in a courtroom in Los Angeles an era came to an end. The California lawsuit (with all that it implied) was over. The posturings and the pretensions of Bob Acosta (his pathetic attempts to be a national figure of consequence and importance) were finished. The much vaunted skill and ability of Acosta's lawyer, Larry Eisenberg, (the man who was proudly called "Big Larry" by his followers and who doubtless comes out of it all with lots of money but little left in the way of reputation) were shown to be non-existent.

Now that it is over, it is time to place it all in perspective. How did the California situation ever begin? What was it all about?

What were the real issues? What are the lessons to be learned? And, perhaps, most important of all: Where does it leave us, and where do we go from here?

In a very real sense the problems involved in the California lawsuit can be summed up in a few simple words: hypocrisy, insecurity, arrogance, and a wish on the part of Bob Acosta to be more than he was or ever could be—more than he had the ability to be. There were, of course, other elements: a lawyer with questionable ethics, exploitation of the situation by the custodial agencies who have been our traditional opponents, and misrepresentation and distortion. But, above all, the key word is hypocrisy.

As far back as the late sixties and the early seventies Bob Acosta was continually plotting to try to discredit Tony Mannino, Perry Sundquist, and other California leaders so that he might gain position for himself. He did not take the straight road of hard work and advancement by merit. Instead, he was constantly maneuvering and attacking the leadership. The letters and remembered comments of Tony Mannino prove it, and there are numerous witnesses to corroborate it. On more than one occasion Tony Mannino expressed utter distaste for Acosta and his tactics. Incidentally, so did Manuel Urena, the California agency official who now claims to have such close affinity for Acosta.

Even so, Acosta had energy, and all of us hoped that he would grow up and arrive at maturity. In 1977 he was elected president of the California affiliate, and apparently his ego could not stand the strain. He undertook his new position with energy, but it was soon apparent that the old shortcuts to achievement (the maneuverings, and the hunger for power) were still present.

In January of 1978 I learned that Acosta had put his wife on the payroll of the California affiliate. He had done this without consulting the California Executive Committee and without seeking legal advice. I told him in a telephone conversation that word of what he had done was leaking out, that an attorney advised me that his actions jeopardized the tax status of the affiliate, and that what he had done did not make good political sense since he had not consulted with other leaders of the affiliate and since he had the sole power to hire and fire.

In an attempt to cover his tracks he called a sudden telephone meeting of the California Executive Committee and hit them with the matter cold. I am told that he implied that I had sanctioned his actions and that he said he had consulted a California attorney and had been assured that his actions were proper. This incident is typical of the difficulties with Acosta. He could say with truth that he had discussed the matter with me (although it was I not he who had brought it up), and he could say that I had told him he should discuss it with the California Executive Committee and that he should seek legal advice. But to make of that conversation a sanction by me of what he had done would be a total and complete distortion of the truth. Furthermore, I believe the facts will show that he had not received an opinion from the attorney at the time he held his telephone conversation with the California Executive Committee and that the attorney was not given all of the data. Nevertheless, he got a majority vote from the California Executive Committee sanctioning the hiring of his wife. However, it was not a unanimous vote, and it was bound to lead to dissension and future trouble.

Much has been made by both sides of the incidents surrounding the hiring of Acosta's wife. After all, Acosta and Eisenberg sanctimoniously point out, "We were doing nothing new—only following time-honored custom and tradition." Is it not true, they ask, that Mrs. tenBroek was put on the payroll while her husband was still alive? Many years earlier was not Gertrude VanVliet (the wife of Franklin VanVliet, who was then national Treasurer) also put on the payroll? Ah, yes, but here is where the hypocrisy comes in; for to compare

the VanVliet and the tenBroek situations with the hiring of Mrs. Acosta and to try to make the two things similar is the ultimate in hypocrisy and attempted deception.

In the first place the tax laws were different in the sixties from what they are today, and in the second place Gertrude VanVliet was receiving only \$200.00 a month. But these are not the real differences between the VanVliet and tenBroek situations on the one hand and the Acosta hiring on the other. It was the straightforwardness and openness with which the former situation was handled; and the secrecy, maneuvering, and hypocrisy involved in the latter. Gertrude VanVliet was given \$200.00 a month only after the matter was brought to the attention of the full national convention, explained, discussed, and openly voted on. In the case of Mrs. tenBroek the Acosta-Eisenberg behavior is particularly despicable, for in my deposition Eisenberg tried to imply that Mrs. tenBroek was on the NFB payroll for many years before her husband's death.

The facts are these: In the late summer of 1967 Dr. tenBroek was dying of cancer. It was known that he had but a few weeks (or, at most, three or four months) to live. In that atmosphere the national Executive Committee assembled in Berkeley. Mrs. tenBroek had never received any financial compensation whatever for her work with the Federation. She had spent the past twenty-seven years of her life working full-time for the Federation—managing the office, typing letters, helping edit the Monitor, and doing anything she could. Now, her husband was dying, and the organization urgently needed her to continue on as

manager of the Berkeley office and general assistant to the President. I was at that meeting in the fall of 1967, and I was First Vice President; so I know what happened and why it happened. The Executive Committee urged Mrs. tenBroek to accept employment with the organization, and even though she was torn by grief and her husband was dying, she answered the call and accepted the position. Only after that Executive Committee vote did she ever draw one dime from the Federation.

To compare this with the shabby behavior of the hiring of Acosta's wife is absolute distortion and hypocrisy, not to mention gross insensitivity and extremely bad taste. The bad taste and hypocrisy are multiplied when one considers the abuse which Acosta was heaping upon Mrs. tenBroek in the early months of 1978 while, at the same time, making such a public show of syrupy praise of her at the banquet of the state convention that spring as to be positively sickening. Here is a man who (even to the present day) claims to be carrying on the tradition of Tony Mannino, who detested him, and Dr. tenBroek, whose widow he tries in every way possible to discredit. If there is any doubt about the matter, ask Mrs. tenBroek, and see whether what I have said is the truth. As I have said, the key word in understanding the California situation and the Acosta downfall is hypocrisy.

While we are talking about the spring, 1978, convention of the California affiliate, it is worth considering how Acosta behaved toward me. In his public utterances on the convention floor he spoke as if I were a saint (or, at least, a good candidate for one at the next time such positions were being

filled). Here is what he said:

"As you know, our enemies which include the American Foundation for the Blind, its stepchild the National Accreditation Council for Agencies Serving the Blind and Visually Handicapped, and the American Council of the Blind have conspired to destroy the finest program for the blind in this nation. They believe that if they can destroy our beloved leader Dr. Jernigan, they have destroyed his dreams and our dreams of a better life for the blind of America.

"Please be comforted to know that Dr. Jernigan is still a viable leader of the organized blind movement and shall be for a long time to come. Our enemies should be told blind Californians are fighting mad as to what was done to our friend and leader. We are proud to stand with Dr. Jernigan on the barricades and we shall redouble our efforts here in California to carry on the goals of the NFB. We are fighting mad and we are going to stand with him one hundred percent.

"I believe you feel as I do—that no living American has done more for the blind of this nation than has Dr. Jernigan and you will show your love and respect by attending the Convention. Because of Dr. Jernigan's drive, ingenuity, and commitment we have never been stronger on the state and national level."

So said Bob Acosta on the convention floor. Yet, only a few hours later he was holding a secret meeting to attack me and tell Ralph Sanders that I was mentally and emotionally unstable, no longer a viable leader, and a variety of other complimentary things. But that was not enough! As the secret

meeting was breaking up, he held a few people back and conducted an inner secret meeting within the secret meeting. According to Ralph Sanders and others, this is the time at which he and Ken Hopkins talked about carving out a Western power base, tried to make deals, and poured on further attacks concerning this Jernigan man, of whom he was so fond. Again, the problem is not the politics or the hope for advancement but the disgusting hypocrisy of it all.

Then, we come to the Nat Lena bequest. Something over \$30,000.00 had been left in a will to the San Francisco Chapter. The chapter members were not told that the will had come due and the money been paid. It was put into the state treasury, and Charles Smalley (the California state treasurer) admits that he was instructed by Acosta not to tell the delegates and members at that same spring, 1978, state convention about the matter.

Acosta's version of the story is that Muzzy Marcelino knew all about the matter. The truth is that Muzzy had learned in 1977 that a bequest was due to be received, but he did not know (nor did the treasurer of the San Francisco Chapter) that the money had been received. The first indication of it came when the tax authorities contacted the chapter treasurer to learn why the bequest had not been reported. And what was Acosta's explanation of it all? Simple: He was keeping it a secret and had intended to surprise the San Francisco Chapter members by announcing it at one of their later meetings.

Is it any wonder that by June of 1978 the affiliate was in chaos and the state board (which only a few months earlier had been solidly in support of Acosta) was now

overwhelmingly against him? Obviously something had to be done.

Ralph Sanders (then national President of the Federation) went to California in June of 1978 and met with Acosta. They met at a restaurant. There are two versions of what happened at that meeting: One version told by Ralph Sanders, Jim Willows, and Stanford Hess (the lawyer); and the other told by Bob Acosta. Which version is the truth? Do we have any external evidence, any way of testing the matter? Yes, we do. All parties agree that the San Francisco bequest and Acosta's handling of it were the topic of discussion. All parties agree that the question of whether Acosta should resign was under consideration. However, there the agreement ends. In the February, 1983, Blind Californian (the Acosta publication) we have the official version of what occurred. Here is what the magazine says: "Fearing that he had committed a wrongdoing and not wishing to destroy the NFB, as Sanders asserted that he was doing, our president [they refer to Acosta] stated that he would resign in the near future. However, upon seeking counsel of two California attorneys, he realized that none of the assertions of Sanders and Hess were correct and he refused to resign."

But this is not the way it happened—and the evidence is overwhelming and incontrovertible. Acosta did not say that he would "resign in the near future." He resigned then and there at that restaurant. Furthermore, he immediately went to the meeting of the San Francisco Chapter (which was at that very moment in progress) and told the entire group that he had resigned—not that he would do it at sometime in the future or would

think about it or would consult attorneys about it but that he had done it. Later, he said publicly that, since he had not done it in writing, he could rescind it. Yes, we know which version is the truth and this will give us a touchstone by which to judge other conflicting testimony.

Later in the summer of 1978 the Board of the National Federation of the Blind of California met and officially confirmed the acceptance of the Acosta resignation. The vote was overwhelming. It carried by more than two-thirds. Contrary to what he has claimed, Acosta was not barred from attending that meeting. Both he and his lawyer were invited to come. The Board did say (and properly so) that it would not permit a yelling mob to enter the room to shout it down and disrupt its deliberations.

By this time Acosta had changed the locks on the office door of the affiliate and had locked other officers out. He had gone up and down the state with groups of his supporters, some of whom had invaded chapters and shouted down the regular members. At that time California was voting by the chapter delegate system, not each person having one vote at state conventions but each chapter voting by delegate. Thus, if Acosta had only a few people who joined multiple chapters, they could stack the election and control the outcome, regardless of the will of the rank and file members.

In this atmosphere what was to be done? The affiliate was in chaos; the chapter delegate system had been subverted; despite his resignation, Acosta was holding himself out as state president in defiance of over two-thirds of the state board; Acosta had control of

the state office and records and had locked others out; telephone calls and mail were being diverted; and total anarchy seemed in the offing. The state board asked the National Board, to intervene. After giving notice to Acosta, the national Board met in Los Angeles on September 16, 1978, to hear and decide the matter. Acosta had voted for the Constitutional language which gave the national Board the power to do what it was doing. He had voted in favor of the Board's power to reorganize other affiliates when the provocation was less and the situation not as urgent. Yet, at the Los Angeles hearing September 16, 1978, he announced early in the hearing that he had no intention of being bound by the Board's decision. He and his lawyer and supporters yelled and shouted and did everything they could to disrupt the meeting. When they saw that the evidence was against them and that they could not take the meeting over by force, they walked out. The Board continued its meeting (a meeting which was fully open and public) and then expelled Acosta and his followers.

One more incident which surfaced at the September 16, 1978, meeting deserves mention. The tape recordings (they are available upon request from the National Office) show that Acosta made much of the fact that he was absolutely open and aboveboard, that he was engaged in no behind-the-scenes maneuvers, and that he wanted nothing to do with any secret activity or deception. Yet, the state of California had been blanketed by letters attacking the character and honesty of the national President and implying that he was guilty of everything from dishonesty to felony. These letters bore a Washington, D.C., postmark and, therefore,

would naturally be supposed to have originated there. However, experts testified (and Acosta did not deny it) that the envelopes containing these letters were addressed on the typewriter in our own state office in California.

Obviously someone prepared the mailings attacking the national President, secretly sent them to Washington, and then had them anonymously mailed back into the state. This at the same time that we were hearing talk about openness, honesty, and lack of deception. Straight-out political attack is one thing but this sort of business is something else. As I have already said, the key word in the problem with which we are dealing is hypocrisy. Of course, Acosta maintains that he knew absolutely nothing about the entire matter.

Be this as it may, a long, involved court case followed. Acosta claimed that he had violated no NFB policies, that he had never had notice of the charges against him, and that the national Board had no power to act. He did not have the courage to come to the 1978 convention, nor did he come to the 1979 convention in Miami, where a full and complete hearing was held concerning the entire matter. Late in October of 1978 the national Board (after proper notice) expelled the California affiliate. This was done upon the request of more than two-thirds of the California board, who felt that the affiliate should be reorganized.

Regardless of the power of the National Board, as the Constitution was then written, there was absolutely no question that the national convention had the power to expel. At the 1979 convention

every rule was followed, and a full and fair hearing occurred. Although Acosta himself was not present, his representatives were, and they participated in the debate, thus confirming their acceptance of the convention's jurisdiction. There was ample notice; there was respectful attention to the speakers on both sides; and there was an overwhelming wish to expel.

Yet, Acosta and Eisenberg said that they were not bound by the actions of the convention. Later in the summer of 1979 when the California court said that the Acosta group could no longer use the name National Federation of the Blind of California, pending the outcome of the court case, Acosta appealed to the California Court of Appeal. The final decision of the Court of Appeal was not rendered until January 14, 1983. It was absolutely and totally devastating to the Acosta position. It utterly destroyed their case. We will return to the decision of the Appeal Court later, but there are a few other things which should be dealt with first.

Under date of October 1, 1978, Mr. Acosta made interesting admissions under oath. It had come to light that he had been mixing personal funds with those of the local chapter of the Federation and that he had bought for \$135.00 a clock, which was then residing in a place of honor at his home. These were his exact words: "The clock is my personal clock. I paid for it with a check drawn on the West Valley Chapter of the National Federation of the Blind of California, with the prior consent and knowledge of the West Valley Chapter president. . . [It is not revealed who the West Valley Chapter president was. But back to the testimony.] Having

retained a public accountant on behalf of the National Federation of the Blind of California, as its president, I now understand that officers of private organizations should avoid comingling of personal and private funds, but I was not aware of that fact at the time of the event in question, well over a year ago. In fact, however, I had always deposited funds in that account, or expended Chapter expenses from my own accounts, well in excess of anything reimbursed to me."

Mr. Acosta's statement speaks for itself, and the clock (his personal clock) probably still holds a place of honor in his home, no further accounts being comingled. Ah, the ways of the world!

Federationists will remember that there were a number of depositions in the California lawsuit. One of them was taken from me. It occurred in Baltimore during the latter part of July, 1982. It is discussed in the Fall, 1982, edition of Mr. Acosta's publication The Blind Californian. Among other things, Mr. Acosta says:

"Since my last report to you, I was a witness to the deposition of Kenneth Jernigan. The deposition was taken in Baltimore, Maryland, since Mr. Jernigan convinced the court he could not travel to Los Angeles. Larry Eisenberg led our group which included my wife, Ruth Anne, Allen Jenkins, and his daughter, Jan. We were very fortunate to have a man of the caliber of John Taylor present as well. John, Ruth Anne, and Jan did an excellent job of tirelessly examining important records relevant to our case in public offices in both Baltimore and Washington, D.C."

This is the way Mr. Acosta begins

his report, and it sounds like a rather straightforward account. Wouldn't you say? But we have learned to approach Mr. Acosta's straightforward accounts with caution. He makes a rather interesting omission, one that was probably not by accident. He says, you will remember, "We were very fortunate to have a man of the caliber of John Taylor present as well." He fails to mention that he was also very fortunate to have Mr. Durward McDaniel on hand day after day during the deposition. Since he mentions everybody else who was there on his team, why do you suppose he forgot Mr. McDaniel? Was it just accident? How strange! How interesting! How revealing! How disgusting!

As a footnote to all of this, I might relate to you a rather humorous incident. One of our team tells me that he saw Mr. Taylor and Mr. McDaniel standing huddled in conversation one morning off by themselves and that Mr. McDaniel appeared to be surreptitiously taping what Mr. Taylor was saying. As reported, he quietly removed his tape recorder from a pocket, checked its operation, and just as unobtrusively replaced it while Mr. Taylor continued to talk. Ah, well—the rain it raineth every day.

Mr. Acosta had more (in fact, much more) to say about my deposition. Here is what he said:

"Our outstanding investigative team also unearthed some interesting information on another subject. Many Federationists will remember that, at the 1977 NFB Convention in New Orleans, we voted to turn over the Jacobus tenBroek Endowment Fund lock, stock, and barrel to the five NFB Officers. The Fund then amounted to over

\$500,000. Well can I remember Kenneth Jernigan telling the delegates to the Convention that he was asking us to trust him. Little did we know how he would abuse that trust.

"Our investigators obtained copies of legal, public records which show that, using the independent tenBroek Memorial Fund, the five NFB Officers purchased the building at 1800 Johnson Street in Baltimore. This is, of course, the current NFB headquarters. The NFB Officers who purchased the building in the name of the Fund were Kenneth Jernigan, Don Capps, Rami Rabby, Lawrence Marcelino, and Richard Edlund. The Fund bought the building from an organization known as Federal Realty Corporation. The five directors of the Federal Realty Corporation were: Kenneth Jernigan, Don Capps, Rami Rabby, Lawrence Marcelino, and Richard Edlund.

"Now I'm not a lawyer and I will not even try to explain what this Federal Realty business means, nor do I make any accusations. I just wonder, as I'm sure you do, what Kenneth Jernigan was up to. By the way, Federal Realty Corporation dissolved on the same date the building was purchased by the tenBroek Fund. There may be nothing illegal with all of this but, as Jernigan is so fond of saying, I wonder. And I wonder if the NFB membership knows anything about this maneuver. It may be within the letter of the law, but I wonder if it is within the spirit."

Mr. Acosta really seems to have got a live one there—drama, abuse of trust, devious behavior, and concealment. It reminds one of the old radio detective stories. We might even call it "The Federal Realty Caper."

To begin with, let us try to sort out the rhetoric from the accusations. Mr. Acosta says: "Now I'm not a lawyer and I will not even try to explain what this Federal Realty business means, nor do I make any accusations." But, of course, he is making accusations. That is the whole point of his article. Apparently he cannot write a dozen sentences without contradicting himself and engaging in double talk. His very words are: "Well do I remember Kenneth Jernigan telling the delegates to the Convention that he was asking us to trust him. Little did we know how he would abuse that trust." Which way does Mr. Acosta want it? Or, perhaps, (judging me by himself) he thinks it is all right to "abuse trust" and, therefore, that what he has said constitutes no accusation.

Well, let him have his contradictions any way he wants them, and let us move on to the meat of his charges. The Federal Realty Company (a corporation I had never heard of until the summer of 1978) owned the building which is now our headquarters at 1800 Johnson Street. If the tenBroek Fund had bought the building from Federal Realty, we would have had to pay many thousands of dollars in real estate transfer taxes. Instead, we bought Federal Realty itself—which had one asset, the building at 1800 Johnson Street. We then immediately dissolved Federal Realty Company and distributed its one asset (our building) to the stockholders of Federal Realty (now us, the Jacobus tenBroek Fund). Thus, we avoided paying many thousands of dollars in real estate transfer tax. Of course, in the few moments between the time we bought Federal Realty Company and the time we collapsed the corporation and distributed its assets to its owner (ourselves, the

tenBroek Fund) the officers of the tenBroek Fund were the officers of Federal Realty. It is that simple and that easy to understand. Not at all mysterious—not like the Acosta maneuvers we have been describing.

It was all perfectly legal; it saved the tenBroek Fund many thousands of dollars; it was announced and publicly talked about at the convention; and whoever says that the transaction constituted an "abuse of trust" is either lacking in comprehension or afflicted by an inability to distinguish between the truth and its opposite. Mr. Acosta and his lawyer knew all of this—or if they did not, they had every reason to know about it and could have known about it if they had wanted to. Then, why did Acosta make the charges in his magazine? Did he hope to get away with one more maneuver—that people would not find out? As I have so often said in this article, the key word in understanding the California situation and the downfall of Robert Acosta is hypocrisy.

Perhaps we should next turn to Acosta's relations with the American Council of the Blind and the National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (NAC). Acosta had always claimed to be a Federationist and had said that he opposed everything NAC and ACB stood for. He went on marches against NAC and said that both they and the ACB were harming blind people and had bad principles. Yet, in the early summer of 1980, Allen Jenkins and Bob Acosta attended NAC meetings in Boston—and not as critics but allies.

Richard Bleecker, NAC's Executive Director, announced during the meeting that Acosta and Jenkins

would be on hand to talk to people and give them the facts about the Federation. Later, Otis Stephens (NAC's President) told me that NAC had paid the travel expenses for Jenkins and Acosta to come.

Of course, this was not the first evidence of alliance between Acosta and the people he had always said were harming the blind. Late in 1979 the organized blind of Minnesota and the nation were carrying on a proxy fight to try to win seats on the board of the Minneapolis Society for the Blind. The Society (one of the most repressive and custodial workshops in the nation) had violated Minnesota law and been ordered to open its membership to all who wanted to join. Acosta lined up with the Society's management and fought against us, while continuing vehemently to protest that he was a staunch Federationist. His allies in the fight were the American Foundation for the Blind, the American Council of the Blind, NAC, and the other custodial agencies which comprise the whole lineup of forces that Acosta had always protested that he opposed on principle. The management of the Minneapolis Society publicly gave him credit for being a major factor in securing the votes they received.

He and Eisenberg made an interesting argument to try to rationalize it all away. After all, they argued, the Federation was trying to get proxy votes and was saying that it was not opposed to the Minneapolis Society. What was wrong with Acosta doing the same? The difference, of course, could be perceived by a child of three. We were not fighting the Minneapolis Society for the Blind but its custodial management, the very group that Acosta and his

supporters were aiding and abetting.

One has to wonder how many of the blind of California who remained loyal to Acosta truly understood the extent of his sellout to the agencies. Sometime during 1980 or 1981 the agencies must have felt that they had a willing pawn and could attack the Federation by financing the Acosta lawsuit. At the 1981 fall convention of the Acosta forces a motion was presented to pay \$150.00 a day to anyone engaged in the business of the lawsuit. This was to be in addition to expenses. It was announced that there were "secret" sources of outside funds to finance it all. Even so, there was a fight on the convention floor, and a lot of the old-time Federationists found it hard to swallow. The "secret" source of the funds was not much of a secret after the 1982 NFB convention. All one needs to do is listen to the comments of William Gallagher, the Executive Director of the American Foundation for the Blind, to realize what it probably means. If the agencies could have dragged out the lawsuit and found a way to have bankrupted the Federation, they would probably have found the cost cheap at any price. But, of course, it did not work.

Acosta's alliance with the agencies and the ACB is underscored by the agenda of his fall, 1982, convention. There is an item on the agenda which reads: "Saturday, November 20, 1982, 2:00 p.m.: 'An Overview of Work for the Blind on the National Level.' (panel). Moderator: Allen Jenkins, member, NFBC Executive Committee. Panelists: Dr. Richard Bleecker, Executive Director, National Accreditation Council for Agencies Serving the Blind and Visually

Handicapped; Kathleen McGivern, Executive Director, American Association of Workers for the Blind; Durward McDaniel, Chairman, Affiliated Leadership League of and for the Blind of America; and John Taylor, member, Iowa Association of the Blind."

Of course, Acosta might argue that we had Bill Gallagher at last year's NFB convention. Yes, but he was surrounded by our own people to put him on the hot seat and ask him questions. We would never have a panel made up entirely of our opponents, and where were the questions and the demands for accountability? It was a sell-out pure and simple. Bleecker, McDaniel, McGivern, and Taylor. All accepted as allies. This from the man who was still protesting that he was a loyal Federationist— and claiming to be carrying on the traditions of Dr. tenBroek and Tony Mannino.

Speaking of Tony Mannino, perhaps it would be well to quote a letter from Tony's sister, Mary Catalano. How did Acosta treat the Mannino family that he loved and cherished so well? How did he show his respect for Tony? Here is a letter to Muzzy Marcelino from Tony's sister Mary. It speaks for itself:

Los Angeles, California
January 5, 1981

Dear Muzzy:

At this time I am sorry to inform you that Robert Acosta has rubbed Frances Mannino and Tony's family out of the Anthony Mannino Memorial Scholarship Fund. He has taken a document to the bank where the account is kept and the document states that the Board passed a Resolution to change the names of the signatores. Members of the Executive Committee know nothing

about this. Of course, we know what will happen to this money. It, too, will go down the drain in attorney's fees. I don't know your feelings on this matter at this time, but if your memories of Tony are dear, I know you will want to help the widow and the family to make Mr. Acosta keep his hands off of it. In order to help we would have to have a letter from you, as President at the time the account was opened, addressed "To whom it may concern" stating in your own words the following: At the time of the death of Anthony Mannino, Frances, his widow, received a great amount of money to be used in whatever manner she wished in memory of Anthony. It was decided since Tony's great interest in life had been educating young blind people, to set up a scholarship memorial fund in his name. This Fund was to be administered by the family and Frances, but they asked if the NFBC would help in selecting the recipients. Also, since Anthony's sister had charge of the bookkeeping in the NFBC office, if the money could be handled through NFBC books. You as President at the time the account was opened agreed to this and it was understood this was to be controlled by Frances Mannino and Tony's family. Also that Frances and the family would continue to help build the fund to be a substantial amount until the interest would provide substantial scholarships for blind students. At no time was this scholarship to be the property of the NFBC. This verbal agreement was made by you and another member of the Board of Directors of the NFBC when this memorial scholarship was founded to hold forever.

It seems Mr. Acosta needs more money than what he already has spent. The fund is now up to \$18,000.00. Frances and the family

are steadily increasing their contributions to it.

I beg you for the love you shared with Tony that you will help to save this fund. If the document you sent me could be documented it would carry more weight, as I feel that Mr. Acosta will take us to court on this. The names he removed were those of Joseph Kater (you know Joe and James Catalano), a grandson of mine. The new signers are Robert Acosta and Charles Smalley. Smalley has always been on the account. Three signatures needed for withdrawal was the original plan. If necessary, please call me reversing the charges any evening. Always working for the good of the blind.

Sincerely,
Mary Catalano

P.S. No longer work at the state office. Too much tension. M.R.

There well may be serious embarrassment if one is caught trying to reach into another organization and destroy it by financing internal lawsuits. There may even be illegality if the money has been received from the government or from charitable contributions. The matter would probably be even more serious if it could be shown that the money was laundered through third parties. Did any of this happen in the financing of the Acosta lawsuit? We do not know. We do know that we did not receive any money from such outside parties and that we paid our own bills. We also know that the Acosta people bragged that they had (for purposes of the lawsuit) what amounted to unlimited funds.

When they came to Baltimore last summer to take my deposition, they brought a large team with them;

they stayed on the most exclusive floor of the most expensive hotel in town; and Mr. Eisenberg was heard to boast that the deposition would cost some \$50,000.00. We started at mid-morning, stopped before late afternoon, and could not get Mr. Eisenberg to work on Saturday or Sunday to finish the matter. I heard him say that his suite was extremely nice, that they brought a small chocolate cup of liqueur to his bed each night, and that the floor on which he stayed was so exclusive that a special key had to be used to get the elevator to go there. This is the same Mr. Eisenberg who kept piously lamenting because so much money had to be spent to continue the lawsuit.

So very, very many things have occurred that deserve comment: The Acosta group raises money to provide blind Californians with scholarships. In Acosta's Fall, 1982, publication it was announced that some \$6,500.00 in scholarships had been granted. And what person, what Californian of merit, received the biggest of them all? None other than that illustrious Californian (formerly of Washington State notoriety) Kenneth Hopkins. He received almost one-fourth of the total, \$1,500.00. Interesting!

A few other loose ends need cleaning up. In Acosta's February, 1983, publication he says: "Kenneth Jernigan always boasted that he would be remembered as being a greater man than was Dr. Jacobus tenBroek. He stated that he would be remembered as the prime mover behind the National Federation of the Blind." This is the kind of cheap rhetoric which characterizes the entire campaign which the Acosta people have conducted. They have repeatedly used and desecrated the name of Dr.

tenBroek, and if he were alive today, he would disown and utterly disavow them. I loved and worked with him through the years. I respected and revered him. Never once have I made the kind of statement which they have attributed to me, and whoever says that I have has simply lied. At least, I have not forsaken and attacked his widow and tried to change her telephone number and divert her mail. I have never tried to shout her down or humiliate her in a public meeting. Actions speak louder than words, and these despicable actions require no further comment.

Did the federal investigations begin to dry up the "secret sources" of the Acosta funds? Did Eisenberg intend to allow the case to come to trial, or was it simply an exercise in seeing how much money he could get and how long he could drag it out before the day of reckoning? Whatever it was, that day of reckoning finally came. As already noted, the California Appeal Court handed down its decision January 14, 1983, and the results were crushing and final. A trial in the lower court was set for March 9, 1983, but there would have been no point.

Even with the decision of the Court of Appeal, however, we have to deal with the double talk of the Acosta group. Here is how they gloss over the matter in the February, 1983, Acosta publication. They put it like this:

"On January 14, 1983, we had an adverse decision by the Court of Appeal upholding the original preliminary injunction of Judge Crickard which prevented both sides from using the name National Federation of the Blind of California.

"After meeting with the Executive Committee, and after talking with other blind Californians, the state organization decided that we would seek a settlement with honor."

Elsewhere in this issue of the Monitor we will print the entire text of the Court of Appeal decision, and you can determine for yourself whether the Acosta description is an accurate portrayal. In the meantime consider these direct quotes from the court decision:

EXCERPTS FROM DECISION OF
CALIFORNIA COURT OF APPEAL
JANUARY 14, 1983

"National is a nonprofit corporation established in the District of Columbia in 1940, as a nonprofit association for the purpose of assisting the blind. In 1949, National was incorporated under the laws of the District of Columbia as a nonprofit charitable corporation. It has existed continually since then nationwide in this corporate form with subordinate state affiliated member organizations in each of the 50 states and in the District of Columbia...

"By letter of May 29, 1979, National's then President, Kenneth Jernigan, informed Acosta and thereby California that the National Convention would consider the question of the expulsion of Acosta and California. The record abundantly reflects that California and Acosta were aware of the charges of impropriety concerning the hiring of Acosta's wife as a fundraiser, the claimed mishandling of funds, and the extreme tension which had been created between California and National as a result of the differences in questions of policy between National and California...

"National Complied With Its Own Rules and Regulations in Expelling California. California Was On Adequate Notice and Received a Fair Hearing Concerning the Expulsion..."

"In our judgment, National complied substantially with its own constitution..."

"We find no contravention of National's constitution in this appeal..."

"California's argument that it was denied notice of the charges is simply without merit. California knew exactly what was disturbing to National..."

"At a hearing on a motion for a preliminary injunction on March 23, 1979 (not the one which is the subject of this appeal), National's counsel indicated to the court that the question of expulsion would be considered at the National's July 1979 convention. This was specific notice to California of National's intent to seek expulsion at the convention..."

"The record does not support California's contention that National failed to comply with its own rules and regulations and further that it was denied notice of the alleged violations and a hearing on such allegations..."

Thus, with the ruling by the Court of Appeal, the game was up for Acosta. Even if he could have prevailed in the trial court on March 9 (which, of course, he could not have done), the matter would then have gone up to the Appeal Court, which had already told him how much merit his case possessed.

In open court on January 31, 1983, the terms of the settlement were recorded. Acosta had one week to

stop using the name National Federation of the Blind of California. We would not use the name until the end of July. Each side would pay its own costs. Each side would not try to interfere with the other's operations and would leave the members free to choose which organization they wished to belong to. Wills coming due before July would go to the Acosta group, after which they would go to us. As a nice little touch of irony, Acosta and his supporters may keep their personal jewelry. May their NFB pins bring them much comfort as they remind them of the shame of what they once were and of what they have lost.

Each side is to keep such money as it has. It is worth making a comment on this subject, for the Acosta group has always claimed that the National Office of the Federation was primarily interested in grabbing their treasury and that California was and is the richest of all of the affiliates. Nonsense! At least two local chapters (not the state affiliate but two local chapters) in Ohio have more money than the California affiliate. Minnesota has more; so undoubtedly does South Carolina; probably Michigan does; and there are likely others. Moreover, the money was never the question at all. If, as the national Constitution provides and as Acosta and his supporters had voted and said they believed, the national organization had the power to reorganize the state affiliate, then the assets of the state organization should have gone to the reorganized state affiliate, not to the National Office. It was never contended otherwise. The money talk was one more example of hypocrisy and diversionary tactics.

At the January 31 hearing

Eisenberg showed himself to be a frightened man. He was careful more than once to say that he wanted the record to reflect that the attorneys would not be sued. Perhaps he thought the chickens were coming home to roost and that he had cause to worry. His frame of mind can be seen in what he said in the February, 1983, Acosta publication. This is how he put it: "In view of the cost of the trial, coupled with some risk of possible payment of costs to the NFB, which would be in the tens of thousands of dollars, in the event of even a partial loss of any of the issues in the case, the Executive Committee voted to proceed with the settlement conference, and after being informed of the terms described above, consented to the agreement."

This is the belligerent Mr. Eisenberg (the man who called us fascists, the man who yelled and screamed and walked out of meetings, the man who said he would bring us to our knees). As the whole thing has run its course and come to an end, perhaps "Big Larry" was the wrong name. Perhaps some other would be more appropriate.

Even though the January 31 settlement brought matters to a conclusion and was "dismissed with prejudice," which means that there can be no appeal, Eisenberg tried to get the Court of Appeal to reconsider its decision and erase it from the record. We objected. The court refused to comply with Eisenberg's request. He failed. The decision stands.

Even though Acosta, Eisenberg, and company agreed not to harass or interfere with our affiliate further, they made a final effort to try a few of the same old tricks. Elsewhere in this issue you will find correspondence

concerning interference with our activities in the city of Santa Maria, California. The attempted interference failed. Our license was granted.

And where do we go from here? For one thing the California situation caused us to re-examine our basic structure and our purpose as an organization. With the Constitutional amendments which we passed in 1979 and the chartering language last summer, another California situation would be almost impossible.

And one more thing: Whereas the NFB Civil War in the late 1950's divided and weakened us, the California situation drew us closer together and brought harmony and increased determination. We are now stronger than we have ever been. We have more momentum, more legislative influence, more sense of organizational purpose, more dedicated members, more love and understanding, and more care and concern for each other. The future looks better than it has ever looked, and tomorrow is bright with promise.

It is unlikely that very much more space will ever be devoted in these pages to Bob Acosta and his associate Eisenberg. Those who have stayed with Acosta through the years and who would now like to come home to the Federation and be reunited with the family will be welcomed and treated as brothers and sisters. Let the past be behind us. We have constructive work to do and the determination to do it.

As to Mr. Acosta, I am reminded of something which my mother used to say when I was a child: No bird ever flies so high that its tail does not follow it. Mr. Acosta's

tale has followed him, and it tells a story which will not soon be forgotten. Certain values are

eternal. They do not change, and they cannot be shortcut or avoided. Hypocrisy does not triumph.

NFB WESTERN DIVISION: THE END OF AN ERA

by SHARON GOLD

The long, arduous California Court battle has come to a victorious conclusion and with it the end of the era of the name "National Federation of the Blind, Western Division." "National Federation of the Blind, Western Division" was the name adopted for the pendency of the court action and, although the name has served us well, Californians are anxious to get back to the business of the Federation as the National Federation of the Blind of California. But, while we are making our preparation to move forward and change our name on August 1, we stop occasionally to reflect on the past five years and the growth of Federationism in California despite the turbulent times, the confusion from the unauthorized use of our name by Robert Acosta, and the attacks on our organization, our membership, and our state and national leaders.

In the summer of 1978, the Executive Committee of the National Federation of the Blind of California found it necessary to exercise certain checks and balances on the practices of and procedures used by Robert Acosta, the organization's then president. Mr. Acosta retaliated by locking the officers out of the office and refusing to relinquish the possessions of the organization including 44 years of organizational records and history, mailing lists, bank accounts, and office equipment and furniture. None of the possessions of the

California affiliate of the National Federation of the Blind have ever been returned to the affiliate.

It was a determined nucleus of Federationists that reorganized the affiliate in November. We dug into our pockets to provide cash, supplies, and equipment to rebuild and revitalize California from the rubble and ruin. It was with much determination that we left the reorganizing meeting to return to our respective homes only to have our spirits dampened the following day as we learned that Mr. Acosta had caused address changes to be placed on the personal mail of many of our officers and Board of Directors. This stealing of our mail took weeks to sort out and eventually required the intervention of a national legislator. In January 1979, some of us lost our telephone service and the whole matter became so bogged down in the courts that we were virtually shut down and precluded from organizational efforts until spring.

March 1979 was the birth of the NFB Spokesman in California, edited by Patricia Munson. The circulation of this first issue of the Spokesman was small as we had only begun to formulate a mailing list. However, by the second issue of the Spokesman, requests were streaming in from persons who wished to receive the publication. It was heartwarming to see the response to

the Spokesman as our brothers and sisters from around the country joined Californians by reaching into their pockets and sending contributions to keep this publication alive.

With the publication of the third issue of the Spokesman, we began publishing a cassette edition with a very limited circulation. Immediately, the response to the cassette edition was so great that several chapters made donations to the affiliate to begin a fund for the purchase of a cassette duplicator. In November 1979, the cassette duplicator became a reality when during the Convention, one chapter held a drawing to benefit the duplicator fund, several sizable personal donations were made to this fund, and during the Banquet an auction was held which raised almost \$1,000—an auction of kisses and endeared personal belongings. Today, four years later, we have begun Volume V of the Spokesman, have published 26 issues, and have a circulation which has increased more than ten fold.

As the affiliate expanded existing chapters and formulated new ones, the spirit of Federationism as a national movement grew within us. For the first time, all of our California chapters played Dr. Jernigan's Presidential Release cassettes at their meetings and all of our California chapters assumed responsibility for funding our movement at the local, state, and national levels. For the first time, California actively participated in such national affairs as our Annual March on Washington. In 1980, we participated for the first time in the National Hike-a-thon/Bike-a-thon Project by holding a Walk-a-thon simultaneously in each of three areas of California.

We have continued to participate annually in the National Hike-a-thon/Bike-a-thon Project and next fall we anticipate holding this project simultaneously in each of five areas. We have proudly presented 100% of the proceeds from these events to our National treasury during our Annual Convention Banquet.

After embarking on several statewide fundraising projects to augment the efforts of our chapters, the NFB Western Division compiled the California statutes which make up the White Cane Law and published them in a handy pamphlet. We distributed almost 60,000 of these pamphlets to the blind of California, to rehabilitation counselors, to coordinators of programs for disabled students, and to 42,500 California attorneys—a mailing which also included our national publication "How the Nation's Blind Can Help You Help Yourself." The NFB Western Division also prepared and published a small brochure for White Cane Safety Day which has been distributed for the last three years in honor of October 15th.

No matter how bleak the days were, Lawrence "Muzzy" Marcelino, Treasurer of the NFB Western Division and Liaison to the California Legislature, regularly and faithfully traveled to Sacramento to carry our Federation message to the Legislature. During this time, NFB members continued to testify on important legislation affecting the blind. We sponsored two pieces of legislation which were signed into law and other legislation was amended to include the blind. We also represented the blind and testified before several regulatory commissions and served on a regional library consumer committee, the Rehabilitation Advisory Committee, and the Advisory Commit-

tee for Services to the Blind—a committee to which NFB Western Division First Vice-President James Willows was elected Vice-Chairperson.

In 1980, we brought an action against the California Franchise Tax Board for its discriminatory practice against blind persons filing personal income tax for 1979. In addition, we have carried out the day-to-day advocacy programs so well known to all of our affiliates, since there is always someone in need of representation on a matter concerning Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), not to mention the persons using dog guides who face discriminatory behavior by businesses, restaurants, hospitals, and of course the airlines. Currently, we are helping a blind mother to exercise her constitutional right to raise her children without interference from local public officials—a right which should not have to be challenged. This lady had her children unjustly taken from her and, because of the National Federation of the Blind, the children were returned and are comfortably at home today.

Human nature being what it is, we tend to look back and recount the good memories, accomplishments, and blessings of these long years. The truth is that the times have been very hard for blind Californians, who have had everything in which we have ever believed attacked, ridiculed, mocked, destroyed, and stolen. The truth is that it has been very hard for Federationists across the country, for when one of us is attacked, we are all attacked. But, you, our brothers and sisters, extended your hands and your love and through your understanding and encouragement, we have all kept the faith and maintained the strength to bring us through. Belonging to the National Federation of the Blind has given us membership in a great and wonderful family and these years of hardship we have endured together have united us.

We open our hearts to those who have lacked the courage to stand with us and have therefore fallen by the wayside. We welcome those who wish to rejoin our family, live by our Constitution, and share in our goals and objectives of first-class citizenship for all of the blind—for in the Federation, there is no place for rancor; there is only a place for love.

LETTER FROM SHARON GOLD

Sacramento, California
March 1, 1983

Dear Colleague:

The attached letter was written by our attorney, Jim Burns, to Mr. Robert Hosli, Finance Manager for the City of Santa Maria, following Mr. Hosli's report of a visit to his office by Dorothy Datter of the now California Council of the Blind. Mrs. Datter was apparently attempting to block the NFB Western Division from obtaining the required license and permits necessary to hold a family show in connection with our public education and advocacy programs in that community. Such an effort to interfere with the operations of the NFB Western Division is in violation of the Court Order as set forth by Judge Crickard on January 31, 1983. It is too bad that Mrs. Datter and/or Mr. Acosta and/or the California Council of the Blind feel so threatened by the NFB that she, he, they or it should attempt to thwart the presence of the National Federation of the Blind and on our efforts on behalf of blind people.

A postscript to all of this is that yesterday, February 28, 1983, I was advised that Mrs. Datter telephoned to the office in Santa Maria where persons, many of whom are volunteers, are making telephone contacts with residences and businesses of that community on behalf of the NFB Western Division. Mrs. Datter apparently yelled and screamed at the person answering the telephone until the person finally told Mrs. Datter she considered her telephone call harassment.

We had hoped that Judge Crickard's order of January 31 would have stopped all of this petty interruption of our organization's efforts. We wish Mrs. Datter, Mr. Acosta, and the California Council of the Blind no ill will. We just wish to get on with the business of the organization and to continue to provide blind persons a proper forum for collective action.

Cordially,
Sharon Gold, President
National Federation
of the Blind
Western Division

LETTER FROM JAMES BURNS

San Francisco, California
February 9, 1983

Mr. Robert Hosli
Finance Director
City of Santa Maria

Dear Mr. Hosli:

I am the attorney for the National Federation of the Blind, Western Division. It has come to my attention that proceedings relating to National Federation of the Blind, Western Division are presently pending before the City Council of Santa Maria. Such proceedings relate to the efforts of the National Federation of the Blind, Western Division to serve the blind community of Santa Maria and its application for a city permit and/or license to do telephone solicitation and to present a family variety show in connection with its efforts.

It has come to the attention of the National Federation of the Blind, Western Division that certain persons associated with the organization now known as the California Council of the Blind have been interfering with the efforts of the National Federation of the Blind, Western Division in Santa Maria. We have been advised that Dorothy Datter, who is a member of and apparently an officer of the California Council of the Blind Chapter in Santa Maria has spoken with you protesting the National Federation of the Blind, Western Division's application for a permit and/or license in an attempt to prevent or impede the National Federation of the Blind, Western Division from pursuing its work in

Santa Maria.

This letter is intended to advise you of the status of the two organizations, National Federation of the Blind, Western Division and California Council of the Blind. California Council of the Blind used to be the California affiliate of the National Federation of the Blind. In 1978 and 1979 disputes arose which led to the disaffiliation of the organization now known as the California Council of the Blind by the National Federation of the Blind. The National Federation of the Blind, Western Division was established as the new National Federation of the Blind affiliate in California. Litigation arose concerning the disputes among the organizations. A settlement agreement concerning that litigation was entered into on January 31, 1983. As part of that settlement agreement which was made an order of the Court, the California Council of the Blind is to cease any interference with the operations of the National Federation of the Blind or the National Federation of the Blind, Western Division.

In view of the aforementioned settlement and Court order entered by the Superior Court of the State of California for the County of Los Angeles in case No. C253059, we expect no further interference or impedance from the California Council of the Blind.

Very truly yours,
James E. Burns, Jr.

cc : Honorable Jack A. Crickard
Lawrence H. Eisenberg, Esq.
City Manager,
City of Santa Maria

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE NATIONAL FEDERATION OF	)	Lawrence H. Eisenberg for Cross-
THE BLIND,	)	Defendant and Appellant.
	)	
Cross-Complainant	)	Kronick, Moskovitz, Tiedemann &
and Respondent,	)	Girard, and Leonard M. Friedman, as
	)	amicus curiae in support of Cross-
vs.	)	Defendant and Appellant.
	)	
THE NATIONAL FEDERATION OF	)	Chickering & Gregory, James E.
THE BLIND OF CALIFORNIA,	)	Burns, Jr., and Monte S. Travis,
	)	for Cross-Complainant and Respon-
Cross-Defendant	)	dent.
and Appellant.	)	

APPEALS from orders of the Superior Court, Los Angeles County. Jack A. Crickard, Judge. Affirmed.

SUMMARY

The appellant National Federation of the Blind of California ("California") appeals from an order of the superior court dated September 28, 1979, granting a preliminary injunction in favor of the National Federation of the Blind ("National").¹ The preliminary injunction enjoins California, and

its officers, agents and employees, from using the name "The National Federation of the Blind of California" or any name containing the sequence "Federation of the Blind" which is likely to cause confusion, deception or mistake. California may continue to use the name "The National Federation of the Blind of

1 Appellant petitioned this court for a writ of supersedeas and a writ of prohibition in which both petitions requested a stay of the enforcement of the preliminary injunction entered below. Following our denial of these petitions, appellant filed similar petitions with our Supreme Court. The Supreme Court granted hearing, transferred the petitions to it for determination, granted the writ of supersedeas, stayed the preliminary injunction pending final determination of the appeal on the merits, and denied the petition for writ of prohibition as unnecessary. The matter was then retransferred to this court for determination on the appeal.

California" only in respect to pending lawsuits or to designate itself in any probate or similar proceedings relating to any gift, devise, or bequest in which the donee has denominated California as the recipient. Similarly, National is prohibited from using the name "The National Federation of the Blind of California" or any similar

name which is likely to cause confusion, deception, or mistake. National was required to post a \$50,000 bond in connection with the injunction. For the reasons stated herein, we find no abuse of discretion by the superior court and accordingly affirm the judgement entered below.

FACTS

National is a nonprofit corporation established in the District of Columbia in 1940, as a nonprofit association for the purpose of assisting the blind. In 1949, National was incorporated under the laws of the District of Columbia as a nonprofit charitable corporation. It has existed continually since then nationwide in this corporate form with subordinate state affiliated member organizations in each of the 50 states and in the District of Columbia. National's constitution also provides for student and international divisions and members at large. However, only the state affiliates are voting members at the National Convention. National's Convention is its legislature and final authority on all issues of policy. Each state affiliate has one vote at the National Convention and there is only one affiliate in each state. Typically, each state affiliate is a separate, nonprofit organization, incorporated under the laws of its domicile state and usually composed of local chapters. The name, "The National Federation of the Blind," and various derivatives have been exclusively associated with National and its affiliates at international, national, state, and local levels. National's name and three service marks are federally

registered under the Lanham Trademark Act (15 U.S.C. 1051, et seq.). Each state affiliate utilizes the National trade name and service marks in connection with the state organization's services, programs and activities on behalf of blind persons.

Article VI of National's constitution concerns state affiliates. An organization desiring to become a state affiliate of National submits an application together with a copy of its constitution, a list of officers, and other pertinent information. There are specific requirements for a state affiliate such as the requirement that a majority of the executive committee of the state affiliate be blind persons. This article states: "Affiliates must comply with the provisions of the Constitution of the Federation [National]. Policy decisions of the Federation are binding upon all affiliates, and the affiliate must participate affirmatively in carrying out such policy decisions. The name **National Federation of the Blind, Federation of the Blind**, or any variant thereof is the property of The National Federation of the Blind; and any affiliate, or local chapter of an affiliate, which ceases to be part of The National

Federation of the Blind (for whatever reason) shall forthwith forfeit the right to use the name **National Federation of the Blind, Federation of the Blind, or any variant thereof. . . . The affiliate must not indulge in attacks upon the officers, Board members, leaders, or members of the Federation or upon the organization itself outside of the organization, and must not allow its officers or members to indulge in such attacks.** This requirement shall not be interpreted to interfere with the right of an affiliate or its officers or members to carry on a political campaign inside the Federation for election to office or to achieve policy changes. No affiliate may join or support, or allow its officers or members to join or support any temporary or permanent organization inside the Federation which has not received the sanction and approval of the Federation." (Latter emphasis added.)

Article VII states that "[e]ach state affiliate shall pay an annual assessment of \$30. Assessments shall be payable in advance on or before January 1." Article IX deals with amendments and states, "[t]his Constitution may be amended at any regular annual Convention of the Federation by an affirmative vote of two-thirds of the states registered, present and voting. Provided further: that the proposed amendment must be signed by five member states in good standing and that it must have been pre-

sented to the President the day before final action of the Convention." California is a nonprofit, charitable organization dedicated to promoting the welfare of the blind. It was founded in 1934 as an unincorporated association and in 1940 became affiliated with National. It was originally known as the "California Council of the Blind." In 1956, California was incorporated under the nonprofit laws in the state of California and changed its name to "California Council of the Blind, Incorporated." The corporate constitution declared that its purpose was to promote the general welfare of the blind and to do so in cooperation with National. In 1971, the California name was changed in conformity with National's policy to include the National name. At this point, California became known as "The National Federation of the Blind of California."²

In 1978, Robert Acosta became President of California. In the Spring of 1978, his conduct in office came under attack. Questions were raised concerning the hiring of his wife as a fund raiser and the effect of this hiring on the tax exempt status of California; the possible improper handling of a sizable bequest intended for the San Francisco chapter of California; and the increasing friction within California which was causing problems both within the membership of California and between California and National, which was causing adverse publicity for both organi-

² At oral argument, counsel informed the court that National and California each maintained separate funds but that the two organizations occasionally sponsored joint fundraising events. It thus appears that the two organizations are financially independent and have separate assets although they might have in the past relied on each other for fundraising purposes.

zations. In June 1978, National's then President, Ralph Sanders, met with Acosta in San Francisco. When confronted with the above charges, Acosta announced his resignation effective immediately. Acosta later refuted his resignation and continued to hold office in California. In the meantime, a rival set of officers had been established in the California affiliate but Acosta retained control over several offices using California's resources and supplies.

On August 30, 1978, litigation was commenced by members of the California Executive Committee against Acosta and others. That complaint sought injunctive, declaratory and other equitable relief. In September 1978, National's board of directors met in Los Angeles for the purpose of considering, among other things, whether Acosta should be expelled from National. A lengthy meeting was conducted, attended by Acosta and his legal counsel, as well as a number of members of California. Pursuant to this meeting, National's board of directors voted to expel Acosta from membership in National. In October 1978, the superior court ordered that an election of officers be held at the Fall 1978 convention of California which was to be supervised by a court-appointed master. Despite the previous expulsion by National, Acosta was elected president at the court-ordered election.

In November 1978, the trial was assigned to Judge Crickard for all purposes. The caption of the case was changed so that the individual names of the former executive committees were now shown as plaintiffs; National was shown as a cross-complainant. On March 13, 1979, National filed its verified cross-complaint against California,

alleging, among other things, unfair competition, and seeking injunctive relief. National noticed a motion for a preliminary injunction, which was argued on March 23, 1979. The trial court granted the motion with respect to the federally-registered service marks and ordered that appellant cease using the marks during the course of litigation. But, the court did not grant the requested injunctive relief insofar as California's use of the name "The National Federation of the Blind of California." Counsel for National inquired of the trial court whether the motion with respect to the name could be renewed after the National Convention. The court responded that it was making the order without prejudice to future rights.

By letter of May 29, 1979, National's then President, Kenneth Jernigan, informed Acosta and thereby California that the National Convention would consider the question of the expulsion of Acosta and California. The record abundantly reflects that California and Acosta were aware of the charges of impropriety concerning the hiring of Acosta's wife as a fundraiser, the claimed mishandling of funds, and the extreme tension which had been created between California and National as a result of the differences in questions of policy between National and California. The record reflects that these so-called "charges" were asserted by National as violation of its constitution and that National considered California to be "disloyal." Acosta indicated in one of his "fireside chats" which he recorded by cassette tape and distributed to members of California, that he would not attend the National Convention held on July 2-6, 1979, in Florida. Acosta in fact did not attend.

On July 3, 1979, the National Convention passed two constitutional amendments. One amendment modified the existing National constitution article III, section E, to read as follows: "Any member, local chapter, or state affiliate of this organization may be suspended, expelled, or otherwise disciplined for misconduct or for activity unbecoming to a member or affiliate of this organization by a two-thirds vote of the Board of Directors or by a simple majority of the states present and voting at a National Convention. If the action is to be taken by the Board, there must be good cause, and a good faith effort must have been made to try to resolve the problem by discussion and negotiation. If the action is to be taken by the Convention, notice must be given on the preceding day at an open Board meeting or a session of the Convention. If a dispute arises as to whether there was 'good cause,' or whether the Board made a 'good faith effort,' the National Convention (acting in its capacity as the supreme authority of the Federation) shall have the power to make final disposition of the matter; but until or unless the Board's action is reversed by the National Convention, the ruling of the Board shall continue in effect."

The second constitutional amendment amended article V, section B, by adding the additional language as follows: "By a two-thirds vote the Board may suspend one of its members for violation of a policy of the organization or for other action unbecoming to a member of the Federation (National). By a two-thirds vote the Board may reorganize any state or local affiliate. The Board may not suspend one of its own members or reorganize a state or local affiliate except for good cause and

after a good faith effort has been made to try to resolve the problem by discussion and negotiation. If a dispute arises as to whether there was 'good cause' or whether the Board made a 'good faith effort,' the National Convention (acting in its capacity as the supreme authority of the Federation) shall have the power to make final disposition of the matter; but until or unless the Board's action is reversed by the National Convention, the ruling of the Board shall continue in effect."

The votes on these amendments occurred on the first day of the convention. On the second day and third days of the convention, votes were taken on Resolution 79-101 which dealt with the expulsion of Acosta and California. Preceding the vote on the resolution on the first day, the issue of the expulsion was debated by persons speaking on both sides of the question using time allotments voted on and approved by the delegates. The votes on the constitutional amendments were 47 to 2 in favor of adoption. The votes on the resolutions expelling Acosta and California were 46 to 3 in favor of the expulsion. The National Convention revoked California's right to use National's trade name and service marks. The delegates to the National Convention had a total of 51 votes representing the 50 states and the District of Columbia. A similar expulsion resolution was offered and carried as to the Washington state affiliate. During the National Convention, delegates representing the states of California and Washington were not allowed to vote. This accounts for the fact that there were two votes less than the total 51 available.

Following the National Convention, National renewed its motion for a

preliminary injunction seeking to restrain California from using the name the "National Federation of the Blind of California," any name containing the sequence Federation of the Blind, or any similar name likely to cause confusion, deception or mistake. The motion, filed August 3, 1979, was supported by points and authorities and set forth details concerning the National Convention proceedings and

incorporated by reference pleadings previously submitted in connection with National's prior motion for a preliminary injunction. The moving papers included copies of the resolutions at the National Convention and transcriptions of the Convention proceedings. Subsequently, the court issued the preliminary injunction from which California takes this appeal.

ISSUES ON APPEAL

The briefs of the parties to this appeal are extremely detailed and lengthy. Similarly, the record on appeal is substantial and contains 2293 pages of clerk's transcript included in six volumes together with the reporter's transcript of 178 pages. In our view, the question on appeal is essentially whether the trial court abused its discretion in granting the preliminary injunction. Nevertheless, we shall respond to the specific contentions raised by appellant which in summary are as follows:

1. The evidence presented in support of the preliminary injunction motion failed to demonstrate National's compliance with its own rules and regulations in ordering the expulsion of California.

2. National denied California proper notice of the alleged violations of National's rules and regulations and further denied California a due process hearing prior to its expulsion.

3. The alleged violation of

National's rules and regulations do not constitute cause for expulsion of California and the trial court abused its discretion in refusing to examine the basis for the expulsion.

4. The preliminary injunction was improperly granted because it altered the status quo of the parties and was tantamount to a summary judgement with none of the protections afforded in summary judgement proceedings.

5. The trial court erred in refusing to rule on California's evidentiary objections timely presented; such error was prejudicial.

6. The trial court erred in refusing California reasonable time to respond to the moving papers in ruling on the preliminary injunction.

7. The preliminary injunction deprived California of a substantial property right without due process of law, without just compensation and in the absence of a trial on the merits.

DISCUSSION

As stated in Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 527, "[t]he authorities are numerous and uniform to the effect that the granting or denial of a preliminary injunction on a verified complaint, together with oral testimony or affidavits, even though the evidence with respect to the absolute right therefor may be conflicting, rests in the sound discretion of the trial court, and that the order may not be interfered with on appeal, except for an abuse of discretion." [Citation; fn. omitted.] Discretion is abused in the legal sense 'whenever it may be fairly said that in its exercise the court in a given case exceeded

the bounds of reason or contravened the uncontradicted evidence.' [Citations.] This rule of review necessarily assumes that the proceedings were otherwise regular and that the pleadings, affidavits, testimony and other evidence were properly before the court."

We have reviewed the record on appeal with the above rule in mind. The court was faced with a lengthy record which included voluminous documents, affidavits and declarations. Based on our review of the record, we find no abuse of discretion by the trial court in granting the preliminary injunction.

I

NATIONAL COMPLIED WITH ITS OWN RULES AND REGULATIONS
IN EXPELLING CALIFORNIA. CALIFORNIA WAS ON
ADEQUATE NOTICE AND RECEIVED A FAIR
HEARING CONCERNING THE EXPULSION

Appellant's first two contentions on appeal attack the granting of the preliminary injunction on the basis of the failure of National to comply with its own rules and regulations and the failure of National to give California proper notice of the alleged violations and a hearing which complied with notions of due process. These assertions are without merit.

In making these assertions, California relies heavily on our Supreme Court's decision in California Dental Assn. v. American Dental Assn. (1979) 23 Cal.3d 346. California Dental involved a private voluntary organization (Calif-

ornia Dental) which expelled one of its members for ethical misconduct, but the expulsion was subsequently reversed by its parent body (American Dental). The question presented in that appeal was whether the constituent organization could obtain judicial review of the adjudicatory decision by its parent when the latter assertedly failed by its parent to comply with its own by-laws. Our Supreme Court concluded that "when a private voluntary organization plainly contravenes the terms of its bylaws, the issues of whether and to what extent judicial relief will be available depend on balancing (1) the interest in protecting the

aggrieved party's rights against (2) the infringement of the organization's autonomy and the burdens on the courts that will result from judicial attempts to settle such internal disputes." (*Id.*, at p.350.) The Supreme Court concluded that when the "interest of the aggrieved constituent is its right to adopt and enforce higher ethical standards than those of the parent, it is appropriate for a trial court to direct the parent's adjudicatory body to consider the standards of the constituent, as required by the parent's bylaws, in deciding an appeal from the constituent." (*Ibid.*)

California Dental is not authority in support of California's position. The thrust of California Dental is to require a voluntary organization to comply with the rules of its bylaws and charter. In our judgment, National complied substantially with its own constitution. In fact, California Dental is favorable to National's position. At pages 353-354, the decision states: "As was recognized in Dingwall v. Amalgamated Assn. etc. (1906) 4 Cal.App. 565, 569 . . . 'the rights and duties of the members as between themselves and in their relation to [a private voluntary] association, in all matters affecting its internal government and the management of its affairs, are measured by the terms of [its] constitution and by-laws.' [Citation.] In many disputes in which such rights and duties are at issue, however, the courts may decline to exercise jurisdiction. Their determination not to intervene reflects their judgment that the resulting burdens on the judiciary outweigh the interests of the parties at stake. One concern in such cases is that judicial attempts to construe ritual or obscure rules and laws of private

organizations may lead the courts into what Professor Chafee called the 'dismal swamp'. [Citation.] Another is with preserving the autonomy of such organizations. [Citation.] We stated in Pinsker v. Pacific Coast Society of Orthodontists, *supra*, 12 Cal.3d at page 558, that 'in adjudicating a challenge to the society's rule as arbitrary a court properly exercises only a limited role of review. . . . "In making such an inquiry, the court must guard against unduly interfering with the Society's autonomy by substituting judicial judgment for that of the Society in an area where the competence of the court does not equal that of the Society"'

"The courts will nevertheless accept jurisdiction over private voluntary organizations when the aggrieved party can demonstrate "an abuse of discretion, and a clear, unreasonable and arbitrary invasion of [its] private rights. . . ."' [Citation]" (Emphases added.)

We find no contravention of National's constitution in this appeal. Prior to the amendments made at the July 1979 convention, National's constitution stated as follows:

"Article III. MEMBERSHIP Section A. The membership of The National Federation of the Blind shall consist of the members of the state affiliates plus members at large. Members at large shall have the same rights, privileges, and responsibilities in The National Federation of the Blind as those exercised by members of state affiliates. . . . Section E. The Convention by a two-thirds vote may expel and by a simple majority vote suspend, or otherwise discipline, any member or affiliate for conduct

inconsistent with this Constitution, or policies established by the Convention; provided that notice of the proposed action shall be announced to the Convention on the preceding day." (Emphasis added.)

"Article VI. State Affiliates ... Affiliates must comply with the provisions of the Constitution of the Federation [National]. Policy decisions of the Federation are binding upon all affiliates, and the affiliate must participate affirmatively in carrying out such policy decisions. . . . The affiliate must not indulge in attacks upon the officers, Board members, leaders, or members of the Federation or upon the organization itself outside of the organization, and must not allow its officers or members to indulge in such attacks." (Emphasis added).

We conclude that National complied with the procedures set forth in its constitution as they were stated before the amendments ap-

proved at the July convention and pursuant to the July amendments. (*Supra*, at pp. 9-11.) California's argument that it was denied notice of the charges is simply without merit. California knew exactly what was disturbing to National. The charges were the subject matter of a number of pleadings filed in court and affidavits and declarations filed in response thereto. In fact, Acosta's own response and declaration indicates his acknowledgement of the claimed charges and his attempts to refute them.³

At a hearing on a motion for a preliminary injunction held on March 23, 1979 (not the one which is the subject of this appeal), National's counsel indicated to the court that the question of expulsion would be considered at the National's July 1979 convention. This was specific notice to California of National's intent to seek expulsion at the convention. Acosta informed his California constituents of his decision not to go to

³ In fact, Acosta wrote several articles included in the California organization's "The Blind California" about the conflict between California and National. One of these articles was entitled "The Civil War and the California Crisis." Quoting from that article, is the following which was an address delivered by Acosta at the Fall convention of California on November 4, 1978: "Newcomers to the NFB [National] soon hear of the Federation's Civil War which saw the National Organization brought to a standstill during the open conflict which raged from 1957 to 1960. Those of us who are committed to the Federation naturally want to know about the conflict, its causes, the happenings of the time, and the war stories of NFB veterans. . . . Because of many opportunities I've had, and my interest in knowing NFB history, I feel prepared to offer you a series of understandings and conclusions about the Civil War, and to try to put what has happened to us in California during 1978 into perspective. I do this because California's Crisis of 1978 has caused some NFB members to claim this is 1960 all over again. Listening to the phony charges of the 'Unhappy Eight,' [National Board of Directors] and recalling the statements of some National leaders, we know that a few people would have us believe this is indeed the Civil War revisited."

the National convention. At the National convention, the subject matter of the dispute was debated and by overwhelming majority, 47 to 3, the expulsion order of California and Acosta was voted on and approved.

The record does not support California's contention that National failed to comply with its own rules and regulations and further that it was denied notice of the alleged violations and a hearing on such allegations. National's articles and constitution set up a voluntary organization whose main purpose was to establish a network of state affiliates and members which would promote the social and charitable purposes of National. There was an obvious conflict between the views of National and California which resulted in litigation. California

was given adequate notice of the alleged violations and a fair hearing at the National convention. We decline to exercise our jurisdiction insofar as substituting our judgment as to whether the alleged acts by California justified the expulsion from National. The wisdom of the decisions mentioned in California Dental, *supra*, 23 Cal.3d 346, in which the courts declined to exercise jurisdiction in disputes between voluntary organizations is applicable herein.

Our above analysis of appellant's first two contentions on appeal in essence responds to appellant's third contention; we find no abuse of discretion in the trial court's refusal to examine the basis upon which National decided to expel California.

II

THE TRIAL COURT PROPERLY BALANCED THE COMPETING INTERESTS IN GRANTING THE PRELIMINARY INJUNCTION

California contends that the trial court altered the status quo of the parties in issuing the preliminary injunction because the last peaceful and uncontested status of the parties prior to the initiation of the litigation was that California was lawfully utilizing the name National Federation of the Blind of California and lawfully engaged as an affiliate member of National. California asserts that National filed a suit for the purpose of seeking a change of California's operation and that the effect of the preliminary injunction was to deprive California "a 50-year-old organization, of the right to do

any further business pending the outcome of this case" As authority for this proposition, California cites Continental Baking Co. v. Katz, *supra*, 68 Cal.2d 512 at page 528, which states: "The general purpose of such [a preliminary] injunction is the preservation of the status quo until a final determination of the merits of the action. [Citations.]" However, the quotation from Continental Baking also states "[t]hus, the court examines all of the material before it in order to consider 'whether a greater injury will result to the defendant from granting the injunction than to the

plaintiff from refusing it; . . . ' [Citations.] In making that determination the court will consider the probability of the plaintiff's ultimately prevailing in the case and, it has been said, will deny a preliminary injunction unless there is a reasonable probability that plaintiff will be successful in the assertion of his rights. [Citations.] . . . 'In the last analysis the trial court must determine which party is the more likely to be injured by the exercise of its discretion [citation] and it must then be exercised in favor of that party [citation].'"

Thus, the trial court was faced with an exercise of its discretion in determining whether to grant the preliminary injunction which had the effect of altering the status quo of the parties. We cannot say that the trial court abused its discretion in granting the preliminary injunction or that the trial court was incorrect in deciding that there was sufficient reasonable probability that National would be successful in the assertion of its rights in view of our discussion above.

Appellant's assertion that the effect of the preliminary injunction had the effect of depriving California of the right to do any further business is simply without merit. The preliminary injunction only restrains California from utilizing the name National Federation of the Blind, which the record clearly shows was originally adopted by National in 1940 and later adopted as its incorporated name in 1949. It was not until 1971 that California adopted the name and style of "National Federation of the Blind of California" in conformity with National's name. While it is true that the preliminary injunction

denied the right of California to utilize National's name in the form of "The National Federation of the Blind of California" and the newly registered service marks, National similarly was restrained from using the name "National Federation of the Blind of California" or the name "Blind California" or similar names which would confuse the public in connection with any fundraising activities. California could simply continue its operation utilizing a name which was not in violation of the court's preliminary injunction order. The trial court did not err in balancing the respective interests and making the order in question.

Business and Professions Code section 14400 states that "[a]ny person who has first adopted and used a trade name, whether within or beyond the limits of this State, is its original owner." Under section 14402 of the Business and Professions Code, "[a]ny court of competent jurisdiction may restrain, by injunction, any use of trade names in violation of the rights defined in this chapter." In Brown v. Hook (1947) 79 Cal.App. 2d 781, an appeal was taken from an order of the superior court granting a preliminary injunction enjoining defendants Machinists' Union No. 68 and its officers from, among other things, utilizing the name "Machinists' Union No. 68." The litigation arose out of a conflict between the grand lodge of the International Association of Machinists (International) and the local union, Machinists' Union No. 68 (Local). In 1941, disputes between International and Local commenced. The Local called a strike in eleven plants without the consent and over the objection of International. The President of the United States and the President of International intervened, and

after six weeks of strike, work was resumed. Thereafter, sporadic labor disputes occurred in which Local was involved. International refused to extend strike sanctions and notified Local that such sanctions could not be considered. Subsequently, at a membership meeting of Local, a motion of the Local membership was made to withdraw from International, which was carried by an overwhelming majority. Local returned its charter to International and the members formed an unincorporated association known as "Machinists' Union No. 68" composed of all of the former members of the Local. One of the issues on appeal was whether the trial court properly enjoined the newly formed union from using the name "Machinists' Union No. 68." Defendants contended that the trial court's order enjoining them from using the name was erroneous first because the seceding Local was still the same entity as it was before and during its connection with International, and secondly, a number like "68" is not the subject of appropriation.

While the Local's charter name when it first became affiliated with International was "San Francisco Lodge No. 68, I.A.M.," it continued to use its former name "Machinists' Union No. 68" prior to the affiliation as well as its new name. The court in Brown v. Hook concluded that International was entitled to the injunction "not because of any exclusive right to its name, but because of the confusion and misleading that must necessarily follow from two similarly named organizations in the same locality, one of which has so long been identified with the other that the general public would have difficulty in determining which was which." (Id., at p. 800.)

As in Brown v. Hook, allowing California to continue use of the name "National Federation of the Blind of California" would be confusing to the public. Under Business and Professions Code section 14400, National was the original owner of the name and under section 14402, was entitled to injunctive relief.

III

NO PREJUDICIAL ERROR OCCURRED IN THE TRIAL COURT'S FAILURE TO RULE ON EVIDENTIARY OBJECTIONS

Appellant contends that the court failed to rule upon certain evidentiary objections. Appellant objected to the affidavit of Kenneth Jernigan because certain paragraphs in the affidavit are conclusory and hearsay. But these contentions are without merit because those paragraphs simply set forth references to exhibits and to actions

which took place at the National convention. Paragraph 2 of the affidavit states: "Attached hereto as exhibit A is a copy of the letter [4 pages] dated July 11, 1979 from me to Mr. Howard, the NFB's [National's] counsel, setting forth the actions which took place with respect to California and Washington at the NFB Board Meeting and

the general business sessions of the NFB Convention. Attached hereto as exhibits B, C, D, E, F, and G are copies of the six attachments to my letter to Mr. Howard [14 pages in total]. Paragraph 3 of the affidavit states as follows: "The facts set forth in my letter to Mr. Howard are true and correct, and the attachments thereto are true and correct copies of notices that were given and actions that were taken." Appellant's contentions as to Jernigan's affidavit are without merit. In order to preserve an evidentiary objection on appeal, "[w]here inadmissible evidence is offered, the party who desires to raise the point of erroneous admission on appeal must **object** at the trial, **specifically** stating the grounds of his objection, and directing the objection to the **particular evidence** which he seeks to exclude." (Witkin, Calif. Evidence (2d ed. 1966), Introduction of Evidence at Trial, 1285, p. 1188.) (Emphases in original.) The fatal defect in appellant's objection is that it lacked the required **specificity** as to the objectionable parts of the affidavit. Without such specification, such objection is deemed waived.

Appellant also objects to the affidavit of Larry A. McKeever as not being the best evidence. McKeever's affidavit states that he attended a meeting of National's board of directors on July 2, 1979, and the convention sessions held July 3-6, 1979, during which he caused all the proceedings to be tape recorded. The affidavit further indicates that at the request of Kenneth Jernigan he reproduced portions of those tape recordings consisting of all proceedings of the board meetings and general sessions of the convention and transmitted the tapes of these portions to National's counsel, Mr.

Howard. We fail to see what is objectionable in this affidavit as not being the best evidence since it merely states what Mr. McKeever did rather than to report the contents of the board meetings and the convention proceedings.

Appellant also objects to the declaration of Donna C. Bennett as being hearsay and not the best evidence. Ms. Bennett, a legal secretary employed by National's legal counsel, indicated that she "transcribed those tape recordings verbatim to the best of my ability, and a copy of that transcription is attached . . ." to her declaration. California objects to the declaration insofar as it states that "she transcribed as best she could" the tapes. Both the transcription and the tapes were made available to the court and the parties. Furthermore, appellant failed to specify in its objections or in its opening briefs specific portions of the transcription which they contest as being erroneous. With a record as voluminous as exists in the present appeal and assuming arguendo that such evidence was erroneously received, we cannot conclude that the trial court would have reached a different result if portions of the transcription were excised as being erroneous transcriptions of the convention hearings or board meetings.

The transcription was admissible evidence under section 1509 of the Evidence Code, which provides that "[s]econdary evidence, whether written or oral, of the content of a writing is not made inadmissible by the best evidence rule if the writing consists of numerous accounts or other writings that cannot be examined in court without great loss of time, and the evidence sought from them is only

the general result of the whole; but the court in its discretion may require that such accounts or other writings be produced for inspection by the adverse party." In the present appeal, National presented

the actual tape recordings to the court for its inspection and examination. The transcriptions were admissible under section 1509 over a best evidence objection.

IV

THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN SETTING THE MOTION FOR THE PRELIMINARY INJUNCTION

On August 3, 1981, counsel for National informed the court that it would like to renew the motion for preliminary injunction as to California's use of the name "National Federation of the Blind of California" which had been previously denied by the court prior to the National convention. Counsel conferred with the court and counsel for California objected to setting of the motion on August 31. In the course of the discussion on scheduling the motion, counsel for National informed the court that the motion was in essence a renewal of the previous motion that in part had been denied and offered to the court the actual tapes of the convention which it represented to be about four and a half hours, together with a 180-page transcript of those proceedings. Counsel for National requested leave to file the motion and requested a hearing date and briefing schedule. National was prepared to give counsel for California copies of the motion for the preliminary injunction that morning. Counsel for California informed the court that he needed more than two weeks to respond to the motion. The court decided to set the motion for hearing on August 31, instead of August 24. Counsel for National was willing to stipulate to continue other motions at a later date, but counsel for

California wanted to continue the motion for the preliminary injunction and not the other pending matters.

Despite California's contention to the contrary, the motion for preliminary injunction was not based on the second amended cross-complaint filed on August 31, 1981. Instead, it is based on the previously filed verified first amended cross-complaint and is in essence a renewal of the motion which National had filed on March 13, 1979, which the court had denied with an indication that it might reconsider the motion after the National convention had considered any efforts to expel California.

Code of Civil Procedure section 527 sets forth the time for hearing on a motion for preliminary injunction. That section contains a provision for a defendant's right to a continuance to enable defendant to meet the application for the preliminary injunction. However, as Witkin states, this provision for a continuance "is not quite as absolute as its terms would suggest: **First**, the mandatory language has been limited, by interpretation, to the situation in which the hearing on a preliminary injunction comes after a temporary

restraining order and ex parte order to show cause. The plaintiff, already protected by the restraining order, is not injured by the continuance. But if no restraining order is obtained, and the hearing on the application is set by notice of motion, the plaintiff might be prejudiced by delay. Accordingly it has been held that in such event the defendant does not have the absolute right to a continuance. (Wutchumna Water Co. v. Superior Court (1932) 215 C. 734, 739, 12 P.2d 1033.)" (2 Witkin, Calif. Procedure, (2d ed. 1970), Provisional Remedies, 91, p. 1525.)

In the instant appeal, the motion for preliminary injunction by National was in essence a renewal in part of a motion previously filed.

We cannot agree that the record reflects any abuse of discretion by the trial court in establishing the briefing schedule. National was entitled to have its motion heard within the time specified in section 527 of the Code of Civil Procedure. National accepted the trial court's setting of the hearing some 28 days after filing the motion even though it was entitled to have the motion set earlier under section 527. The papers were promptly served or delivered to counsel for National and opposing papers were filed on August 15, 1979, some two days in advance of the date set by the court. We find no impropriety in the court's setting of the hearing date or in establishing the briefing schedule as set forth above.

V

A PRELIMINARY INJUNCTION IS NOT A SUMMARY JUDGEMENT AND IS PROVISIONAL ONLY

Appellant's final contention is that the preliminary injunction attempts to preclude California from continued use of its own name and that such order was made without the customary protections afforded such as a trial on their merits in violation of the basic due process rights guaranteed by the United States and California Constitutions.

Appellant's motion is without merit. A preliminary injunction is, as its name applies, only "preliminary." It represents nothing more than the trial court's assessment of the moving party's likelihood of success and the balancing of the

injuries expected to befall each of the parties as a result of the court's rulings. In essence, appellant's argument is in reality once again questioning whether or not the trial court abused its discretion in granting the subject order. Since a trial will ultimately determine the relative merits of the injunction issue, we cannot agree with appellant's bald and emotional assertion that it is being denied due process, deprived of just compensation without a trial on the merits.

For the reasons stated above, we affirm the trial court's order granting the preliminary injunction.

